



Comptroller General  
of the United States

Washington, D.C. 20548

140206

## Decision

**Matter of:** DDD Company  
**File:** B-237052  
**Date:** December 14, 1989

### DIGEST

1. Contracting agency acted reasonably in selecting offeror submitting superior technical proposal over a lower priced offeror where the solicitation provided that technical factors would be worth 70 percent in the evaluation and price would be worth 30 percent.
2. Protest that contracting agency deviated from the evaluation criteria set forth in the solicitation is denied where the record demonstrates that the agency consistently applied enumerated criteria.

### DECISION

DDD Company protests the award of a fixed-price, requirements contract to Research Analysis Institute (RAI) under request for proposals (RFP) No. Sbd-89-1, issued by the Savings Bonds Division (SBD), Department of the Treasury, for warehousing and distribution services for savings bonds promotional materials. DDD contends that the SBD deviated from the enumerated evaluation criteria by (1) improperly rejecting its low-priced, technically qualified offer; (2) failing to conduct an on-site inspection of its facility; (3) improperly applying the evaluation criterion relating to references; and (4) improperly holding discussions with RAI which resulted in unspecified evaluation criteria being used to improve RAI's score.

We deny the protest.

The SBD issued the RFP on June 23, 1989, for a 1-year base period with up to four 1-year options. The RFP required the submission of technical and price proposals with each to be separately evaluated. The RFP set out eight major technical evaluation criteria, worth up to 15 points each, for a total of 70 points: Project Management (10), Storage Facilities (5), Inventory and Material Handling Procedures (5), Mailing List Procedures (5), Mailing Services Procedures (10),

Fulfillment Services Procedures (10), Quality Control Procedures (10), and References (15). The technical proposals were to be evaluated and ranked on the basis of points awarded by a technical review panel. The price proposals were to be evaluated by comparing the offerors' total prices for the base and option years; as an evaluation factor price was worth up to 30 points. The RFP further provided that the "contract will be awarded to the offeror best meeting the needs and requirements of the [SBD], cost and other factors considered. The Government reserves the right to award the contract to other than the lowest-priced offeror."

Four offerors responded to the RFP, including the awardee and the protester. A competitive range of two offerors was established consisting of DDD and RAI. In the evaluation to determine the competitive range, DDD, the lowest priced offer, received the maximum 30 points for price, while RAI received 27.33 points. With regard to the technical scores, DDD received 49.25 points, RAI, 62.5 points. The combined technical and cost scores were: RAI, 89.83; DDD, 79.25. There were no technical issues requiring negotiation or further discussions with either offeror. The SBD requested best and final offers (BAFOs) from each offeror by August 18.

DDD's BAFO price was \$1,353,999; RAI's was \$1,451,855, which is \$97,856, or 7.23 percent, higher than DDD's. The contracting officer reviewed the BAFOs and had the price scores revised. RAI's price score (27.97 points) increased slightly, as did its total score (90.47); DDD's total score (79.25) remained unchanged. Subsequently, the SBD determined that RAI's superior technical proposal outweighed any cost savings in DDD's proposal and, finding RAI to be responsible, awarded the contract to that firm on September 11. DDD filed this protest in our Office on September 22, following an initial protest to the SBD.

DDD maintains that the technical merit of RAI's proposal could not have substantially outweighed the added cost to the government represented by RAI's proposal. As the low-priced offeror, DDD argues that the SBD improperly rejected its technically acceptable proposal. We disagree.

The contracting agency is primarily responsible for determining which technical proposal best meets its needs, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have consistently held that procuring officials enjoy a reasonable range of discretion in evaluating proposals and in determining which proposal is to be accepted for award, and

that such determinations are entitled to great weight and will not be disturbed unless shown to be unreasonable or in violation of procurement statutes or regulations. CACI, Inc.-Federal, B-225444, Jan. 13, 1987, 87-1 CPD ¶ 53. Further, in a negotiated procurement, the contracting agency may select a highly rated technical proposal over a low-priced proposal where doing so is in the best interest of the government and consistent with the evaluation scheme set forth in the RFP; the agency is not required to make award to the lowest priced offeror unless the RFP so requires. Electronic Data Sys. Federal Corp., B-207311, Mar. 10, 1983, 83-1 CPD ¶ 264.

Here, a panel of four SBD officials independently evaluated and scored the technical proposals based on the factors set out in the RFP. Each official rated the RAI proposal higher than the DDD proposal. The total technical scores (DDD, 49.25 and RAI, 62.5) differed by over 13 points. Based on the technical evaluations of the proposals, the contracting officer reasonably determined that the technical superiority of RAI outweighed the lower price offered by DDD. This decision was consistent with the evaluation scheme in the RFP, which made technical considerations substantially more important than cost, and with RAI's overall higher score. In addition, we have examined each evaluator's technical score sheet in camera and we see no basis to question the technical scores. Under these circumstances, the SBD properly awarded the contract to RAI based on its determination that the technical superiority of RAI's proposal warranted its higher price. Kay and Assocs., Inc., et al., B-229850 et al., Apr. 4, 1988, 88-1 CPD ¶ 337.

DDD next argues that the SBD improperly failed to inspect DDD's facility as required by the RFP. The RFP contains two provisions addressing on-site inspections. Section M-4.2 concerns the evaluation factor for storage facilities and states as follows:

"Basis of review: This factor will be analyzed on the basis of the offeror's description of available facilities and storage practices. NOTE THAT THE GOVERNMENT WILL CONDUCT AN ON-SITE INSPECTION OF CONTRACTOR FACILITIES."

Section M-6, entitled "Pre-Award On-Site Inspection of Facilities," provides:

"Prior to award of a contract, the Contracting Officer and/or the COTR and/or their respective designees will perform an on-site

inspection of the apparent contractor's facility where work will be performed under this contract to ensure compliance with the offer and the requirements of the solicitation."

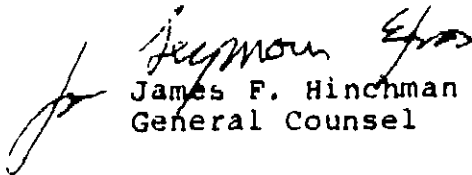
Contrary to DDD's contention, neither provision requires an on-site inspection of all offerors; rather, the RFP clearly contemplated an on-site inspection only of the prospective awardee's facilities. Section M-4.2 explicitly distinguishes between the evaluation of an offeror's storage facilities--which would be based on "the offeror's description"--and the subsequent on-site inspection of the contractor's facilities. Similarly, Section M-6 calls for inspection of the "apparent contractor's" facility to ensure compliance with the RFP requirements.

DDD further contends that RAI failed to supply "active" references as allegedly required by the RFP. Although DDD does not define the term, it appears that DDD refers to "active" references as those where an offeror currently is performing under contract. The RFP did not so limit the type of references to be submitted; rather, Section M-4.8 provides that references "will be analyzed on the basis of the quality, quantity and nature of previous work of a similar nature." Moreover, RAI clearly satisfied the requirement for references. RAI submitted five references, including the SBD, where it was the incumbent contractor. RAI was performing at two of its references and had recently completed performance on the others. Thus, we agree with the SBD that RAI's references were not stale, and we see no basis to conclude that the evaluation of the references improperly favored RAI. On the contrary, the SBD excluded itself as a reference from the evaluation in an attempt to neutralize any advantage to RAI as the incumbent, and considered only RAI's four remaining references. Nevertheless, RAI scored higher for its references (12 points), than did DDD (9 points).

Finally, DDD speculates that the DDO improperly engaged in discussions with RAI, which led to unenumerated evaluation criteria being used to improve RAI's score. DDD does not offer any proof, and there is no evidence in the record, to support this allegation. Other than the preproposal

conference held on July 12, 1989, a transcript of which appears in the record, there is no evidence whatsoever that the SBD held any improper discussions with the offerors.

The protest is denied.

James F. Hinchman  
General Counsel